

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: : CASE NO: 22-50832-WLH
: CHAPTER: 13
:
STEVEN E. WEINSTEIN :
Debtor :
----- :
SELECT PORTFOLIO SERVICING, INC. AS :
SERVICER FOR U.S. BANK NA, SUCCESSOR :
TRUSTEE TO BANK OF AMERICA, NA, :
SUCCESSOR TO LASALLE BANK NA, AS :
TRUSTEE, FOR THE WAMU MORTGAGE :
PASS-THROUGH CERTIFICATES, SERIES :
2005-AR3, :
Movant, :
: CONTESTED MATTER
vs. :
:
STEVEN E. WEINSTEIN :
NANCY J. WHALEY, Trustee :
Respondents. :

NOTICE OF HEARING

PLEASE TAKE NOTICE that **Select Portfolio Servicing, Inc.** as servicer for **U.S. Bank NA**, successor trustee to **Bank of America, NA**, successor to **LaSalle Bank NA**, as trustee, for the **WaMu Mortgage Pass-Through Certificates, Series 2005-AR3** has filed a Motion for *In Rem* Relief from Automatic Stay and related papers with the Court seeking an order modifying stay *in rem*.

PLEASE TAKE FURTHER NOTICE that the Court will hold an initial telephonic hearing for announcements on the motion at the following number: **(toll-free number: 833-568-8864; meeting id: 161 202 1574)**, at **10:45 AM on March 16, 2022 in Courtroom 1403, United States Courthouse, 75 Ted Turner Drive, S.W., Atlanta, Georgia 30303**

Matters that need to be heard further by the Court may be heard by telephone, by video conference, or in person, either on the date set forth above or on some other day, all as determined by the Court in connection with this initial telephonic hearing. Please review the "Hearing Information" tab on the judge's webpage, which can be found under the "Dial-in and Virtual Bankruptcy Hearing Information" link at the top of the webpage for this Court, www.ganb.uscourts.gov for more information.

Your rights may be affected by the court's ruling on these pleadings. You should read these pleadings carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.) If you do not want the Court to grant the relief sought in these pleadings or if you want the Court to consider your views, then you and/or your attorney must attend the hearing. You may also file a written response to the pleading with the Clerk at the address stated below, but you are not required to do so. If you file a written response, you must attach a certificate stating when, how and on whom (including addresses) you served the response. Mail or deliver your response so that it is received by the Clerk at least two business days before the hearing. The address of the Clerk's Office is: Clerk, U.S. Bankruptcy Court, 75 Ted Turner Drive, S.W., Suite 1340, Atlanta, GA 30303. You must also mail a copy of your response to the undersigned at the address stated below.

If a hearing on the Motion for *In Rem* Relief from Automatic Stay cannot be held within thirty (30) days, Movant waives the requirement for holding a preliminary hearing within thirty days of filing the motion and agrees to a hearing on the earliest possible date. Movant consents to the automatic stay remaining in effect until the Court orders otherwise.

Dated: 3/1/22

/s/ Lisa F. Caplan

Lisa F. Caplan

GA State Bar No. 001304

Rubin Lublin, LLC

3145 Avalon Ridge Place, Suite 100

Peachtree Corners, GA 30071

(877) 813-0992

lcaplan@rlselaw.com

Attorney for Creditor

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: : CASE NO: 22-50832-WLH
: CHAPTER: 13

STEVEN E. WEINSTEIN
Debtor

:
:
:

SELECT PORTFOLIO SERVICING, INC.
AS SERVICER FOR U.S. BANK NA,
SUCCESSOR TRUSTEE TO BANK OF
AMERICA, NA, SUCCESSOR TO LASALLE
BANK NA, AS TRUSTEE, FOR THE WAMU
MORTGAGE PASS-THROUGH
CERTIFICATES, SERIES 2005-AR3,
Movant,

:
:
:
:
:
:
:
:

: CONTESTED MATTER

vs.

:
:

STEVEN E. WEINSTEIN
NANCY J. WHALEY, Trustee
Respondents.

:
:
:
:

MOTION FOR *IN REM* RELIEF FROM AUTOMATIC STAY (REAL PROPERTY)

Select Portfolio Servicing, Inc. as servicer for U.S. Bank NA, successor trustee to Bank of America, NA, successor to LaSalle Bank NA, as trustee, for the WaMu Mortgage Pass-Through Certificates, Series 2005-AR3 (“Movant”) hereby moves this Court, pursuant to 11 U.S.C. §362, for relief from the automatic stay with respect to certain real property of the Debtor having an address of **1516 BARRINGTON COURT NW, ATLANTA, GA 30327** (the “Property”), for all purposes allowed by law, the Note (defined below), the **Security Deed** (defined below), and applicable law, including but not limited to the right to foreclose. In further support of this Motion, Movant respectfully states:

1. Steven E Weinstein has executed and delivered or is otherwise obligated with respect to that certain promissory note in the original principal amount of **\$562,000.00** (the “Note”). A copy of the Note is attached hereto as Exhibit “A”. Movant is an entity entitled to enforce the Note.

2. Pursuant to that certain **Security Deed** (the “**Security Deed**”), all obligations (collectively, the “Obligations”) of the Debtor under and with respect to the Note and the **Security Deed** are secured by the Property. A copy of the **Security Deed** is attached hereto as Exhibit “B”.

3. The legal description of the Property and recording information is set forth in the **Security Deed**, a copy of which is attached hereto, and such description and information is incorporated and made a part hereof by reference.

4. The entity which has the right to foreclose is: U.S. Bank NA, successor trustee to Bank of America, NA, successor to LaSalle Bank NA, as trustee, for the WaMu Mortgage Pass-Through Certificates, Series 2005-AR3 by virtue of being the holder and owner of the note.

5. The borrower, Steven E. Weinstein (the “Borrower”), passed away on January 2, 2012. A copy of his obituary and probate documents for the estate of the Borrower filed with the Fulton County Probate Court are attached hereto as “Exhibit C”. Per the obituary, Steven E. Weinstein was survived by several family members, though none were named Steven E. Weinstein. Movant asserts the instant chapter 13 bankruptcy case #**22-50832** filed on January 31, 2022 by “Steven E. Weinstein” was filed solely to stop Movant’s pending foreclosure sale set for February 1, 2022 and is not a valid bankruptcy filing due to the Borrower having been **deceased** for **ten (10) years**. The petition was delivered to the Court by Emanuel De’Andre Clark (the “Petition Filer”) (See dkt. no. 1, pg. 9). Not only has there been a fraudulent bankruptcy filing regarding this Property but there has also been a fraudulent Quit Claim Deed executed and recorded. On January 1, 2021, ***nine (9) years after the Borrower passed***, a Quit Claim Deed was purportedly executed by “Steven E. Weinstein” transferring the Property to Artis Vance. The Quit Claim Deed was not recorded until one year later January 19, 2022 in the Fulton County Georgia Land Records at Deed Book 65133, Page 371. A copy of the Quit Claim Deed is attached hereto as “Exhibit D”.

6. Through additional research, it appears that Emanuel Clark’s name is also associated with other deeds for various properties where the Grantor on the deed was already deceased prior to the

alleged conveyance or the Grantor had presumably abandoned the real property, as evidenced by a completed tax sale. A list of said transactions is to follow:

- **Property: 508 Tall Pines Court, Stockbridge, GA 30281**

Per the Henry County Property Assessor, Rosalie G. Forest purchased the real property located at 508 Tall Pines Court, Stockbridge, GA 30281 (the “Stockbridge Property”) on August 26, 2004. A copy of the R.F. Henry County Property Records is attached hereto “Exhibit E”. Ms. Forest subsequently passed away on October 2, 2011. A copy of her obituary and Westlaw Credit Reporting information is attached hereto at “Exhibit F”. On January 1, 2018, *seven (7) years after Ms. Forest passed*, a Quit Claim Deed was purportedly executed by Rosalie G. Forest transferring the Stockbridge Property to Emanuel Clark (the “RF Quit Claim Deed”). The R.F. Quit Claim Deed was subsequently recorded in the Henry County Georgia Land Records at Deed Book 16014, Page 6 on August 16, 2018. A copy of R.F. Quit Claim Deed is attached hereto as “Exhibit G”. Per the Henry County Property Records on August 7, 2018 the Petition Filer sold the Stockbridge Property to Rojano & Associates, LLC for purchase price of \$226,000.00, *see Exhibit E*. Rojano & Associates sold the Stockbridge Property to a Brittany Jackson who then transferred it to Brittany and Stephen McLeod. Movant is unaware of any pending quiet title actions on the Stockbridge Property.

- **Property: 3865 Heathermere Court, Decatur, GA 30034**

Per the DeKalb County Property Assessor, Gussie Pierce purchased the real property located at 3865 Heathermere Court, Decatur, GA 30034 (the “Decatur Property”) on June 8, 2001. A copy of the DeKalb County Property Records is attached hereto as “Exhibit H”. Ms. Pierce subsequently passed away on August 27, 2006. A copy of her Westlaw Credit Reporting information showing her date of death is attached hereto at “Exhibit I”. On August 21, 2015, *nine (9) years after Ms. Pierce passed*, a Warranty

Deed was purportedly executed by Gussie Pierce transferring the Decatur Property to Emanuel Clark (the “Warranty Deed”). The Warranty Deed was recorded three (3) years later on June 7, 2018 in the DeKalb County Georgia Land Records at Deed Book 26957, Page 50. A copy of Warranty Deed is attached hereto as “Exhibit J”. Even though Emanuel Clark recorded the Warranty Deed from Ms. Pierce, DeKalb County stated the sale was invalid (*see* Exhibit H). The DeKalb County Tax Commissioner and Ex Officio Sheriff of DeKalb County sold the property in a tax sale on August 1, 2017 to Deed Co, LLC, prior to the recordation of the Warranty Deed. The Tax Deed was recorded on September 6, 2017 at Deed Book 26474, Page 586 in the DeKalb County Georgia Land Records (“G.P. Tax Deed”). A copy of the G.P. Tax Deed is attached hereto as “Exhibit K”. In 2019 NR Deed, LLC pursued a quiet title action that was subsequently granted by the Dekalb County Superior Court on March 11, 2019. The Final Order and Decree (the “Order”) was subsequently recorded on March 20, 2019 in the DeKalb County Georgia Land Records at Deed Book 27445, Page 302. A copy Order is attached hereto as “Exhibit L”.

- **Property: 2060 North Ave, NW, Atlanta, GA 30318**

The real property located at 2060 North Ave, Atlanta, GA 30318 (the “Atlanta Property”) was previously owned by Louise Houser Lazenby. On May 3, 2016 Theodore Jackson, the Sheriff of Fulton County, sold the Atlanta Property in a tax sale to Khosrow Jamali (AJN Investing LLC). The Tax Deed was subsequently recorded on May 4, 2017 one year and 1 day after the tax sale in Deed Book 57471, Page 45 in the Fulton County Georgia Land Records (the “L.L. Tax Deed”). A copy of the L.L. Tax Deed is attached hereto as “Exhibit “M”. On January 29, 2019, two and half years after the tax sale and a year and half after the recordation of the L.L Tax Deed, a Warrantee Deed was purportedly executed by the Estate of Louise H. Lazenby to Emanuel Clark as Trustee

for the 2060 North Ave NW Trust(the “Warrantee Deed”). The Warrantee Deed was subsequently recorded in the Fulton County Georgia Land Records on June 13, 2019 at Deed Book 60137, Page 444. A copy of the Warrantee Deed is attached hereto as “Exhibit N”. Movant cannot confirm through its research if Ms. Lazenby is in fact deceased. Subsequent to the recording of the Warrantee Deed, Khosrow Jamali on July 2, 2019 executed an Affidavit of Barment of Redemption (the “Affidavit”) stating he was the rightful owner of the property from the previous tax sale held in 2016. A copy of the Affidavit is attached hereto as “Exhibit O”. Even though the Affidavit was filed and recorded by Khosrow Jamali because this was completed after the Warrantee Deed was executed and recorded, the Fulton County Georgia Tax Commissioner lists “Clark Emanuel” as the current owner of the Atlanta Property. A copy of the 2021 Tax Bill is attached hereto as “Exhibit P”.

- **Property: 2360 S. Hairston Road, Decatur, GA 30035**

Per the DeKalb County Property Assessor, Debra Coker (the “D.C. DeKalb County Property Records”) purchased the real property located at 2360 S. Hairston Road, Decatur, GA 30035 (the “D.C. Decatur Property”) on April 14, 2008. A copy of the D.C. DeKalb County Property Records is attached hereto as “Exhibit Q”. The DeKalb County Tax Commissioner and Ex Officio Sheriff of DeKalb County subsequently sold the D.C. Decatur Property in a tax sale on August 2, 2011 to DeKalb County. The Tax Deed was subsequently recorded on September 29, 2011 in Deed Book 22650, Page 555 in the DeKalb County Georgia Land Records (the “D.C. Tax Deed”). A copy of the D.C. Tax Deed is attached hereto as “Exhibit “R”. On August 21, 2015 Debra Coker purportedly executed a Warranty Deed to Emanuel Clark (the “D.C. Warranty Deed”). The D.C. Warranty Deed was recorded in the DeKalb County Georgia Land Records at Deed Book 26957, Page 51 on June 7, 2018 seven (7) years after the D.C. Tax Deed was

recorded. A copy of the D.C. Warranty Deed is attached hereto as “Exhibit S”. Based on a search of the land records, Movant has been unable to find any evidence Debra Coker redeemed the D.C. Decatur Property. On August 28, 2021 Emanuel Clark executed a Warranty Deed to Gonzalez Business Solution, LLC (the “Second D.C. Warranty Deed”). The Second D.C. Warranty Deed was recorded in the DeKalb County Georgia Land Records at Deed Book 29669, Page 40 on September 4, 2021. A copy of the Second D.C. Warranty Deed is attached hereto as “Exhibit T”. Even though Emanuel Clark has tried to transfer the rights of the Second Decatur Property to himself and then to Gonzalez Business Solutions, LLC, the transfers are invalid because the property is still owned by DeKalb County (*see Exhibits R and S*).

7. As of **February 1, 2022**, the outstanding amount of the Obligations less any partial payments or suspense balance is **\$936,493.24**.

8 As of **February 1, 2022**, **133 payments** are due pursuant to the terms of the Note leaving the mortgage account due for the **February 1, 2011 contractual payment**.

9. The estimated market value of the Property is **\$825,000.00**. The basis for such valuation is **Broker Price Opinion** (the “BPO”). A copy of the BPO is attached hereto as “Exhibit U”.

10. Movant asserts the lack of performance with respect to the mortgage obligations combined with the fraudulent property transfer and fraudulent bankruptcy filing by the Petition Filer for the deceased Borrower while the arrearage amount continues to increase, indicate that the filed case was not filed in good faith and demonstrate an intention to thwart the lender in its attempt to enforce its rights to foreclose this Property and ultimately amount to a scheme to delay, hinder and defraud Movant.

11. Cause exists for relief from the automatic stay for the following reasons:

- a Movant’s interest in the Property is not adequately protected.
- b. Movant’s interest in the collateral is not protected by an adequate equity cushion.

- c. Post-Petition payments have not been received by Movant.
- d. Pursuant to 11 U.S.C. §362(d)(2)(A), Petition Filer has no equity in the Property; and pursuant to §362(d)(2)(B), the Property is not necessary for an effective reorganization. The fraudulent filing of this instant case indicate that this case was not filed in good faith and demonstrate the Petition Filer's intention to thwart the lender in its attempt to enforce its rights to foreclose this Property.

12. Pursuant to 11 U.S.C. § 362(d)(4), Movant is entitled to a termination of the Automatic Stay with respect to its secured property that will be binding in any other case under this title purporting to affect the Property filed no later than two (2) years after the date of an Order granting said relief. Movant is entitled to such relief since the Borrower is deceased and his legitimate heirs have no prospects or intent to cure the mortgage delinquency and the Petition Filer has fraudulently filed this instant case. The fraudulent bankruptcy filing affecting the Property amount to a scheme to delay, hinder and defraud Movant. This filing has served to delay Movant's ability to exercise its right to foreclose its secured Property under the terms of its Note and Security Deed.

WHEREFORE MOVANT PRAYS:

- 1. Relief from the stay for all purposes allowed by law, the Note, the **Security Deed**, and applicable law, including but not limited allowing Movant (and any successors or assigns) to proceed under applicable non-bankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property.
- 2. That pursuant to 11 U.S.C. § 362(d)(4), the Court further grant an "*in rem* Order"; thereby holding that any future bankruptcy filings by Movant or others claiming an interest in the Property will not stay Movant from enforcing its state law rights and remedies with respect to the Property.
- 3. That Movant be authorized to record a copy of this *in rem* Order in the Fulton County, Georgia land records, consistent with the aforementioned Statute and applicable state law.

4. That the 14-day stay described by Bankruptcy Rule 4001(a)(3) be waived.
5. For such other relief as the Court deems proper.

RUBIN LUBLIN, LLC

/s/ Lisa F. Caplan

Date: March 1, 2022

Lisa F. Caplan

GA State Bar No. 001304

Rubin Lublin, LLC

3145 Avalon Ridge Place, Suite 100

Peachtree Corners, GA 30071

(877) 813-0992

lcaplan@rlselaw.com

Attorney for Creditor

CERTIFICATE OF SERVICE

I, Lisa F. Caplan of Rubin Lublin, LLC certify that I caused a copy of the Notice of Assignment of Hearing and Motion for *In Rem* Relief from Automatic Stay (Real Property) to be filed in this proceeding by electronic means and to be served by depositing a copy of same in the United States Mail in a properly addressed envelope with adequate postage thereon to the said parties as follows:

Steven E. Weinstein
1516 Barrington
Atlanta, GA 30327

Artis Vance
1516 Barrington Court
Atlanta, GA 30327

Emanuel De'Andre Clark
4 Rockmart Drive
Atlanta, GA 30314

Nancy J. Whaley
Standing Ch 13 Trustee
303 Peachtree Center Avenue
Suite 120, Truist Plaza Garden Offices
Atlanta, GA 30303

Executed on 3/1/22

/s/ Lisa F. Caplan
Lisa F. Caplan
GA State Bar No. 001304
Rubin Lublin, LLC
3145 Avalon Ridge Place, Suite 100
Peachtree Corners, GA 30071
(877) 813-0992
lcaplan@rlselaw.com
Attorney for Creditor